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March 18, 2022

VIA ECF

Hon. Vernon S. Broderick
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, New York 10007

APPLICATION GRANTED
SO ORDERED

VERNON S. BRODERICK

U.S.D.J. 03/21/22

Defendants are directed to Rule 5.B. of my Individual Rules & Practices in Civil Cases and to meet and confer with Plaintiff as necessary to determine if the written responses can be filed in redacted form on ECF.

Re: *Spectrum Dynamics Medical Limited v. General Electric Company, et al.*,
Case No.: 18-cv-11386 (VSB)

Dear Judge Broderick:

We represent Defendants in the above-referenced action. We write pursuant to Rule 5.B of Your Honor's Individual Practices in Civil Cases to respectfully request permission to file under seal Defendants' Written Responses to the Court's Questions Set Forth in the March 9, 2022 Sealed Order (Dkt. 417) and Exhibits B to E to the Declaration of Marla R. Butler in Support of Defendants' Written Responses to the Court's Questions Set Forth in the March 9, 2022 Sealed Order (Dkt. 417), which are being filed today, March 18, 2022, and contain information the parties have designated Highly Confidential or Confidential under the parties' Stipulated Confidentiality and Protective Order (the "Protective Order") (Dkt. 156).

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124; *see also Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 U.S. Dist. LEXIS 49029, at *10-11 (S.D.N.Y. Apr. 12) (risk of "competitive injury is sufficiently serious to warrant protection" of proprietary business information). Consistent with this, courts routinely permit sealing and redaction of competitively sensitive proprietary business information or information subject to a claim of privilege. *See, e.g., Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998); *see also Nixon*, 435 U.S. at 598 (recognizing need to seal information that might "harm a litigant's competitive standing").

Here, Defendants' Written Responses to the Court's Questions Set Forth in the March 9, 2022 Sealed Order (Dkt. 417) and the exhibits referenced above contain references to information that is assertedly competitively sensitive and proprietary information of one or both parties and, if disclosed, could pose a substantial risk of harm. This is the sort of sensitive information that courts consistently protect from disclosure. *See, e.g., Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at *16 (S.D.N.Y. Sep. 7) (sealing documents containing proprietary

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information); *Encyclopedia Brown*, 26 F. Supp. 2d at 612 (sealing documents reflecting sensitive trade secret information).

For these reasons, Defendants respectfully request permission to file under seal Defendants' Written Responses to the Court's Questions Set Forth in the March 9, 2022 Sealed Order (Dkt. 417) and Exhibits B to E to the Declaration of Marla R. Butler in Support of Defendants' Written Responses to the Court's Questions Set Forth in the March 9, 2022 Sealed Order (Dkt. 417).

Very truly yours,

/s/ Marla R. Butler

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cc: All Counsel of Record via ECF